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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie R. Salas, Esquire
Secretary
Federal Communications Commission
Room TW-B204
445 12th Street, S.W.
Washington, DC 20554

Re: Reply to Opposition to Motion to Hold in Abeyance
MM Docket No. 98-155; RM-9082; RM-9133

Dear Ms. Salas:

Transmitted herewith on behalf of Chisholm Trail Broadcasting Co., Inc., licensee of Station KXLS(FM), Alva, Oklahoma, is an original and four copies of its "Reply to Opposition to Motion to Hold in Abeyance," filed in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Andrew S. Kersting
Counsel for Chisholm Trail
Broadcasting Co., Inc.

Enclosure

cc (w/ encl.): Certificate of Service (by hand & first-class mail)
Mr. Dennis Williams (FCC) (by hand)
Mr. Glenn Greisman (FCC) (by hand)
Mr. James D. Wells, Dallas Field Office

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-155
Table of Allotments,)	RM-9082
FM Broadcast Stations)	RM-9133
(Alva, Mooreland, Tishomingo, Tuttle,)	
and Woodward, Oklahoma))	

To: Chief, Allocations Branch

REPLY TO OPPOSITION TO
MOTION TO HOLD IN ABEYANCE

Chisholm Trail Broadcasting Co., Inc. ("Chisholm"), licensee of Station KXLS(FM), Alva, Oklahoma, by counsel, hereby submits its reply to the "Opposition to Motion to Hold in Abeyance," filed April 13, 1999 ("Opposition"), by Ralph Tyler ("Tyler"). In support of this reply, the following is stated:

In his Opposition, Tyler claims that, by filing its April 1, 1999, Motion to Hold in Abeyance ("Motion"), Chisholm has abused the Commission's processes. Opposition at 1. Tyler also claims that Chisholm's Motion is not supported by Commission precedent and has been interposed for the purpose of delaying the resolution of this proceeding.¹ *Id.* at 2-3. As demonstrated herein, Tyler's Opposition is without merit.

¹ Tyler erroneously claims that Chisholm requested the Allocations Branch to hold this proceeding in abeyance "until the Audio Services Division acts on complaints" Chisholm has filed against Tyler and South Central Oklahoma Christian Broadcasting, Inc. ("South Central"). Opposition at 1. Chisholm requested, instead, that the Allocations Branch refrain from acting on Tyler's rulemaking proposal until the Audio Services Division has acted on Chisholm's Informal Objection filed against South Central's pending license application for Station KAZC(FM), Tishomingo. *See* Motion, pp. 4-5.

In support of his allegation that Chisholm's Motion is "contrary to established law," Tyler cites *Tylertown, Mississippi*, DA 99-531 (Policy and Rules Div., released March 19, 1999). *Tylertown* is distinguishable from the facts in this proceeding for at least two reasons. First, unlike Tyler, the rulemaking petitioner in *Tylertown* did not make material misrepresentations to the FCC and attempt to obtain a grant of its allotment proposal by defrauding the Commission. Moreover, the alleged wrongdoer in *Tylertown* readily acknowledged that he was the sole owner of the rulemaking petitioner. Thus, *Tylertown* did not, in fact, involve a real-party-in-interest issue. *Id.* at ¶8, and n.6.

In addition, *Tylertown* involved a drop-in FM allotment which will be subject to competing applications. Thus, just as in *Camp Lejeune, North Carolina*, 43 RR 2d 900 (Chief, Broadcast Bur. 1978) (cited in Chisholm's Motion at page 2, note 3), there is no guarantee that the rulemaking petitioner in *Tylertown* will ultimately hold the construction permit (or license) for the newly allotted *Tylertown* station. Indeed, the Policy and Rules Division expressly stated that, to the extent the party requesting a stay believed that the rulemaking petitioner engaged in misconduct, it would have the opportunity to file a Petition to Deny against the petitioner's subsequent construction permit application for the new *Tylertown* allotment. *Tylertown* at ¶8.

As Chisholm explained in its Motion (*see* Motion at 2-3), unlike other allocation proceedings such as *Tylertown*, where the alleged character deficiencies of a rulemaking petitioner can be regarded as a "licensing matter," and can be addressed in the normal course through the Commission's application and licensing procedures, in a proceeding such as this, where the petitioner seeks to change its station's community of license, Tyler's material misrepresentations and attempt to defraud the Commission must be addressed before the Allocations Branch can conduct

its Section 307(b) analysis. Indeed, Tyler's fraud formed the very basis of his reallocation proposal. Tyler manufactured the requisite mutual exclusivity for his proposed reallocation by obtaining a construction permit for KTSH at a new transmitter site. However, as demonstrated in Chisholm's December 23, 1998, opposition pleading,² Tyler has never intended to construct a modified facility at the new site. Tyler also lied to the site owner on December 10, 1998, by stating that he "would not have FCC approval to build a tower on [the] property until March or April, 1999." *Id.* Thus, in the absence of Tyler's misrepresentation to the Commission concerning his intent to construct a modified facility for KTSH at the construction permit site, there is no legal basis for the proposed reallocation of Channel 259C3 from Tishomingo to Tuttle because his reallocation proposal is not mutually exclusive with the existing Channel 259C3 allotment at Tishomingo.

Furthermore, it is well established that the Commission will not permit a petitioner to change the community of license of its station if the effect would be to "deprive a community of an existing service representing its only local transmission service."³ In response to the Commission's request to provide further information demonstrating why the public interest would be served by removing Tishomingo's sole local broadcast service merely to provide a first such service at Tuttle,⁴ Tyler made no public interest showing other than to note that Station KAZC had commenced operation and filed its license application. *See* Comments of Ralph Tyler, filed October 21, 1998. The record

² *See* Chisholm's "Opposition to Motion to Accept Response and Response of Ralph Tyler," filed December 23, 1998, pages 16-17 and Exhibit A.

³ *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870, 4874 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

⁴ *See Notice of Proposed Rule Making and Orders to Show Cause*, DA 98-1682, ¶10 (released August 28, 1998).

establishes, however, that Tyler took his own station (KTSH) off the air so that KAZC could commence operations. In the process of doing so, Tyler lied to the Commission regarding the operation of both stations. The Commission must address Tyler's misrepresentations to the Commission in connection with his rulemaking proposal, and, consequently, his qualifications to remain a Commission licensee, before conducting a Section 307(b) analysis of his proposal. If the Commission were to review Tyler's proposal without regard to his misrepresentations, it conceivably could allow Tyler to entirely subvert the Commission's allocation processes through fraud.⁵

Tyler's argument regarding Chisholm's alleged violation of Section 1.52 of the Commission's rules also must be rejected. Tyler is correct that a grant of Chisholm's Motion would, by its very nature, result in some delay in the resolution of the proceeding. However, Chisholm's Motion is not violative of Section 1.52 of the rules. As demonstrated above, the facts in *Tylertown* are substantially different from those in this proceeding. Moreover, there not only is "good ground" to support Chisholm's Motion, but the record in this proceeding warrants a grant of the Motion.

Finally, to the extent it is relevant, Tyler's allegation regarding Chisholm's alleged motive for challenging his reallocation proposal is factually incorrect. As demonstrated in the attached declaration of Hiram H. Champlin, President of Chisholm, Chisholm was not aware that KXLS could be moved into the Oklahoma City area (in the absence of Tyler's reallocation proposal) until

⁵ Tyler's argument that the Commission's decision regarding the proposed reallocation of Channel 259C3 should be based solely on Section 307(b) considerations because his potential disqualification would not adversely affect the reallocation of the channel should be rejected. *See* Opposition at 3, n.1. Tyler's argument fails to recognize that his fraud goes to the very heart of his reallocation proposal.

after Tyler raised that allegation in his January 7, 1999, "Reply to Opposition."⁶ *See* Attachment. Therefore, Tyler's argument regarding Chisholm's motive for challenging his reallocation proposal has no factual basis.⁷

As demonstrated herein, Tyler's material misrepresentations to the FCC and his attempt to obtain a grant of his rulemaking proposal by defrauding the Commission must be addressed before the Allocations Branch can conduct its Section 307(b) analysis of the proposed reallocation. Therefore, in the event the Allocations Branch should determine that this proceeding is not the proper forum in which to address the substantial and material questions regarding Tyler's misconduct, Chisholm respectfully requests that the Allocations Branch hold this proceeding in abeyance.


WHEREFORE, in light of the foregoing, Chisholm Trail Broadcasting Co., Inc. respectfully requests that the Allocations Branch GRANT its Motion to Hold in Abeyance, and hold this allocation rulemaking proceeding in abeyance pending action by the Audio Services Division on the Informal Objection and supplement thereto, filed December 21, 1998, and January 20, 1999, respectively, against the pending license application for Station KAZC(FM), Tishomingo, Oklahoma (File No. BLED-981002KA).

⁶ Chisholm did not previously address Tyler's allegation concerning its motive for challenging his rulemaking proposal because Tyler's January 7, 1999, reply pleading completed the last pleading cycle in this proceeding.

⁷ Tyler's characterization of the potential move of KXLS into the Oklahoma City area as constituting a "lucrative reallocation" (Opposition at 2) serves only to underscore his motive for lying to the Commission in an effort to obtain a grant of his reallocation proposal. Indeed, if it would be "lucrative" for Chisholm to move KXLS into the Oklahoma City area from its existing location in the Enid, Oklahoma, market, it would be just as "lucrative" for Tyler to move KTSH from Tishomingo to Tuttle.

Respectfully submitted,

CHISHOLM TRAIL BROADCASTING CO., INC.

By: 
Kathleen Victory
Andrew S. Kersting

Its Counsel

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April 22, 1999

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ATTACHMENT

DECLARATION OF HIRAM H. CHAMPLIN

I, Hiram H. Champlin, hereby declare and state, under penalty of perjury, the following:

1. I am President, Treasurer, a director, and 100% stockholder of Chisholm Trail Broadcasting Co. ("Chisholm Trail"), licensee of Station KXLS(FM), Alva, Oklahoma.

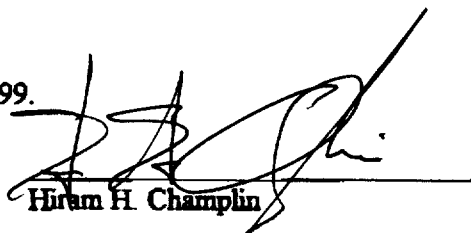
2. I have reviewed each of the pleadings filed in this rulemaking proceeding (MM Docket No. 98-155) by Ralph Tyler, including his "Reply to Opposition," filed January 7, 1999, and recent "Opposition to Motion to Hold in Abeyance," filed April 13, 1999. In both of these pleadings, Mr. Tyler alleges that Chisholm Trail's motive in challenging his proposal to reallocate Channel 259C3 from Tishomingo to Tuttle, Oklahoma, is that the reallocation of Channel 259C3 to Tuttle would preclude Chisholm Trail from being able to move Station KXLS(FM), which operates on Channel 259C1 at Alva, into the Oklahoma City radio market.

3. Mr. Tyler's allegation regarding Chisholm Trail's motive for challenging the proposed reallocation of Channel 259C3 from Tishomingo to Tuttle is simply not true. The reason Chisholm Trail initially filed pleadings in opposition to Mr. Tyler's rulemaking proposal is that I do not want Station KXLS to have to change channels, nor do I believe that Mr. Tyler's proposal complies with the Commission's rules. After the filing of Mr. Tyler's "Comments of Ralph Tyler," on October 21, 1998, Chisholm Trail became suspicious of the operations of Stations KTSH(FM) and KAZC(FM), Tishomingo, and has since challenged Mr. Tyler's rulemaking proposal for the additional reason that he made material misrepresentations to the FCC concerning the operation of these stations.

4. It was not until after the filing of Mr. Tyler's "Reply to Opposition" on January 7, 1999, that Chisholm Trail became aware that, if it were not for Mr. Tyler's proposal to reallocate Channel 259C3 from Tishomingo to Tuttle (and assuming there were no other pertinent changes in the FM Table of Allotments), Station KXLS could be moved to a community in the Oklahoma City

area. I was advised of Mr. Tyler's allegation concerning KXLS by my FCC counsel, and later reviewed the allegation for myself in Mr. Tyler's pleading. I have since discussed this matter with Chisholm Trail's consulting engineer, William H. Nolan.

Signed and dated this 21st day of April, 1999.



Hiram H. Champlin

CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 22nd day of April, 1999, copies of the foregoing "Reply to Opposition to Motion to Hold in Abeyance" were hand delivered or mailed first-class, postage pre-paid, to the following:

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Federal Communications Commission
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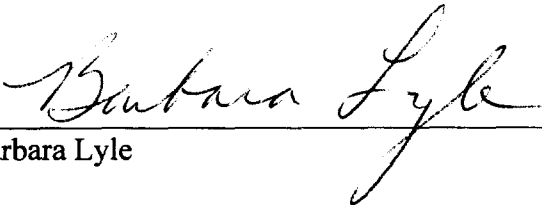
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